IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.345 OF 1990

The State of Mahrashtra)
trhough the Special Land)
Acquisition Officer, Panvel.) ...Appellant

Versus

1. Smt Tikibai Pangya Gharat)

2. Shri Dhondya Pangya Gharat)

3. Shri Bala Pangya Gharat)

4. Smt Janibai Ramdas Patil)

5. Smt Padma Harishchandra Thakur)
All are the heirs of deceased)
Pangya Kondya Gharat.) ...Respondents

Smt. G.P. Mulekar, A.G.P for the Appellant.

Shri S.M. Kamble for the Respondents.

CORAM : A. S. OKA, J.

DATE : JANUARY 09, 2007.

JUDGMENT:

1. Heard the learned Assistant Government Pleader (hereinafter referred to as the A.G.P.) in support of the Appeal. The challenge in this Appeal is to the Judgment and Award dated 12th April, 1989 passed by the learned Civil Judge, Senior Division, Raigad at Alibag. The impugned Judgment has been passed in a reference

under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). A reference was made at the instance of the Respondents. The acquired land admeasures 2430 sq meters situated at village Kamothe, Taluka Panvel, District Raigad. A notification under section 4 of the said Act of 1894 was issued on 03rd February, 1970. The public purpose of acquisition was development of satellite city of Navi Mumbai. The Award was made by the Special Land Acquisition Officer under section 11 of the said Act of 1894 on 16th September, 1986. The Application under section 18 of the said Act of 1894 was filed by the Respondents on 25th November, 1986. The market value offerred by the Special Land Acquisition Officer was Rs.2/- per sq meter. By the impugned Judgment and Award, the learned Trial Judge has fixed the market value at the rate of Rs.15/- per sq meter for a part of acquired land and Rs.14/- per sq meter for the remaining part of the land.

2. The learned A.G.P did not dispute that for similarly situated lands from the same village which were notified on the same date for the same public purpose, a Division Bench of this court has awarded

market value at the rate which is more than Rs.15/- per sq meter and the decision of the Division Bench has attended finality. The submission of the learned A.G.P is that the Application for reference under section 18 of the said Act of 1894 was itself barred by limitation. The learned A.G.P pointed out that notice under section 12(2) of the said Act of 1894 was issued on 16th September, 1986 and was served to the Respondents on the same date. It is submitted that Application for reference ought to have been filed within a period of six weeks from 16th September, 1986 and therefore, Application filed on 25th November, 1986 was barred by limitation.

3. I have considered the submissions made by the learned A.G.P. Under proviso (a) to sub-section 2 of section 18 of the said Act of 1894, an Application for reference is required to be made within six weeks from the date of Collector’s Award in a case where the person making Application was present or represented before the Collector at the time when Award was made. Under proviso (b) to sub-section 2 of section 18, it is provided that in other cases Application has to be filed within six weeks from the date of receipt of the

notice from the Collector under section 12(2) or six months from the date of the Collector's Award whichever period shall expire first.

4. Perusal of the record of the Trial Court shows that no evidence has been led by the Appellant to show that the Respondents or their representatives were present before Special Land Acquisition Officer when the Award was made. Moreover, no document is produced to show that notice under section 12(2) of the said Act of 1894 was served to the Respondents on 16th September, 1986. Nothing is placed on record to show that the notice was served to the Respondents. The learned A.G.P has relied upon letter dated 06th February, 1987 sent by the Special Land Acquisition Officer to the reference court alongwith which the reference Application was forwarded. Alongwith the said letter, a copy of notice under section 12(2) is also forwarded. However, acknowledgment of the said notice allegedly signed by the Respondents is not forwarded to the reference court.

5. I have perused the evidence of Dhondu Pangya Gharat (Respondent No.2 herein) who was examined on

behalf of the Respondents. In the cross-examination, even a suggestion is not given to him that notice under section 12(2) of the said Act of 1894 was served to the Respondents. It is not suggested that the Respondents or their representatives were present at the time of making of the Award. Thus, in absence of proof of service of notice under section 12(2) of the said Act of 1894, the period of limitation will be six months from the date of the Award. In the present case, Application for reference has been admittedly filed within a period of six months from the date of the Award. Hence, submission made by the learned A.G.P as regards limitation cannot be accepted.

6. As Award under section 11 has been made on 16th September, 1986, there is no error as regards grant of statutory benefits to the Respondents.

7. Hence, I pass the following order:

. Appeal is dismissed with no orders as to costs.

JUDGE